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SUBJECT: INFORMATION FOR MEANINGFUL LABOR RIGHTS REPORT

REF: SECSTATE 241222

1. Summary: This cable provides information on labor conditions in Ecuador as requested for the Meaningful Labor Rights Report, and is keyed to questions included in RefTel. End Summary.

Administration of Labor Law

2. The Ministry of Labor and Human Resources (MOL) is made up of various administrative divisions, including the Office of the Vice Minister, the Undersecretary for the Sierra and Amazon, the Undersecretary for the Coast and Galapagos, the Labor Inspectorate, International Relations, Planning, Communication, Internal Auditing and Legal Advising. The MOL received a proposal from the International Labor Organization (ILO) for a restructuring of the MOL which they plan to implement in December.

3. There are 45 labor inspectors nationwide, 11 of whom work in Quito. Article 553 of the labor code defines their jurisdiction. From January through October 2004, the MOL conducted 304 inspections. In accordance with the labor inspection law, individual claims can result in fines from \$5-50. The Ministry of Labor's inspectorate issues approximately 30-40 fines a day.

4. Labor complaints not resolved by MOL administrative action are heard in trials before the labor judges within the Superior Court. (It is not necessary to first make a labor complaint to the MOL. However, approximately 95% of cases are first heard in the MOL.) There are about 4,000 labor court cases a year. Since June 2004, a new oral procedure was adopted for labor cases. Now, trials that previously took 3-5 years can be resolved in 30-60 days. From July 2004, when oral procedures began, to November 2004, the five labor judges heard 1348 cases. Labor court judges told LabOff they had reached sentences on approximately 450 of these cases. Labor court judges also told LabOff they did not have statistics on the reasons the court cases were filed. The decisions of the court can be appealed to the Supreme Court within 10 days after the last hearing. Most cases are filed by workers for violation of contracts or of the law and unjustified firings. Employers and workers generally obey the decisions of the labor courts. In Quito and Guayaquil, there are approximately 30,000 pending cases that date from before the law was passed and need to be tried under the written system.

Freedom of Association

5. The Constitution and labor code provide most workers with the right to form trade unions. According to the AFL-CIO Solidarity Center, about 390,000 workers in Ecuador are unionized (approximately 8.5% of the Ecuadorian economically active population). Of these, approximately 120,000 are members of one of the five union "centrals" or labor confederations, while 270,000 are independent. Those outside of the union confederations include drivers, public servants, health workers, teachers and oil workers. The MOL has approved 878 unions since 1985. No unions are registered in the Export Processing Zones (EPZs).

6. Under the law, unions may freely join federations or confederations. The two largest single labor unions, the National Union of Educators and the Union of Social Security Workers, are allied with the Democratic Political Movement, a far-left party. There are five large labor confederations; no confederation was allied with a political party. There are approximately 70 labor federations established in Ecuador. Important federations include health, electrical workers, public servants, oil workers and municipal workers.

7. The labor code explicitly prohibits employers from interfering in the establishment or functioning of worker organizations. The code also explicitly prohibits employers from dismissing workers while they are forming a union or negotiating a collective contract; however, the penalties for violations are relatively minor and not always enforced in practice. Members of the police, the military, and most public sector employees are not free to form trade unions.

Some public sector employees, however, are covered by the labor code and able to form unions and bargain collectively. While public sector employees not covered by the labor code cannot form unions, they are free to form associations

18. The 1991 labor code reforms set the number of workers required for an establishment to be unionized at 30. In 2002, the ILO criticized the 30-worker minimum as too high and called for the government to take the necessary measures to amend the code. In its 2002 Annual Survey of Violations of Trade Union Rights, the International Confederation of Free Trade Unions reported that 60 percent of the enterprises in the country employed fewer than 30 workers, effectively excluding 1 million workers from organizing a union.

19. Labor laws intended to protect workers' rights to freedom of association sometimes failed to deter employers from retaliating against workers for organizing. Reinstatement is not a legal right of workers fired for union activity.

110. While employees of state-owned organizations enjoyed rights similar to those in the private sector, the law prevents the majority of public sector employees from exercising collective bargaining rights. However, most public employees maintained membership in some labor organization.

Right to Organize and Bargain Collectively

111. According to the MOL, there are currently 651 active collective contracts, which cover 134,762 workers (88,694 in the public sector and 45,053 in the private sector.) However, according to the AFL-CIO Solidarity Center, currently 28,260 workers in Ecuador are covered by collective bargaining agreements. None of these are in the EPZs. As of November 2004, there have been 49 collective bargaining agreements signed in 2004 (previous years: 2003: 114, 2002: 124, 2001: 134). According to the AFL-CIO Solidarity Center, there are three primary reasons why the number is so low for 2004. These are the closing of many businesses due to the poor economy, no new formation of unions due to the 30 person minimum, and the public sector not bargaining collectively due to the new law on standardizing salaries. In accordance with the labor code, unionized as well as non-unionized workers are protected by collective contracts.

112. The labor code provides for resolution of labor conflicts through an arbitration and conciliation board that consists of one representative of the Ministry of Labor, two from the union, and two from management.

113. The labor code requires workers to be represented by only one labor union. It prohibits discrimination against union members and requires that employers provide space for union activities upon the union's request. If the Ministry of Labor rules that a dismissal of an employee is unjustified, it can require the employer to pay severance to the worker of 125 percent of a month's salary for each year worked, although the reforms set a cap on such payments.

114. During the past year, there have been five strikes, two in the public sector and three in the private sector. According to the MOL, this is due to increased dialogue and intervention on the part of the MOL. There are few restrictions on the right of workers to strike, although a 10-day cooling-off period is required before a strike can be declared. The labor code limits solidarity strikes or boycotts to 3 days, provided that the MOL approves them. In some industries, during a legal strike, workers may take possession of the factory or workplace (thus ending production at the site) and receive police protection during the takeover. However, in other industries, such as agriculture, the law requires a 20-day waiting period from the day the strike is called. During this time, workers and employers must agree on how many workers are needed to ensure a minimum level of service, and at least 20 percent of the work force must continue to work in order to provide essential services.

115. The labor code provides that "the employer may contract substitute personnel" only when striking workers refuse to send the number of workers to provide the minimum necessary services in service industries. The employer must pay all salaries and benefits during a legal strike; the labor code protects strikers and their leaders from retaliation.

116. The law does not provide public workers with the right to strike and includes a provision that striking public sector workers are liable to between 2 and 5 years in prison; however, there were frequent unauthorized work stoppages by public sector workers. In September, Congress passed a civil service reform law that creates a unified salary structure for some public workers (it excludes the police, military, teachers, and health care workers). The law reiterates the

prohibition against strikes by most civil service employees.

17. There is no special prosecutor assigned to handle extreme cases of anti-union discrimination or acts of interference, such as murders and beatings, however these are not common crimes in Ecuador. The Ministry of Labor is the organization within the Ecuadorian government responsible for ensuring the respect of workers' rights.

Prohibition of Forced or Compulsory Labor

18. The Government has proposed legislation to reform the penal code to criminalize prostitution of minors under 18 and trafficking in persons (TIP). On August 18, the president signed a decree establishing a national commission to fight TIP and provide social services to victims. The Executive branch submitted its package of legislative reforms in September, which remains under Congressional review. The reforms are designed to bring the penal code into compliance with international conventions against trafficking in persons and alien smuggling.

19. The government and NGOs are designing programs to assist trafficking victims. The ILO with GoE cooperation plans to open a shelter for minors who are victims of commercial sexual exploitation in Machala by January 2005. USAID and Geneva Global will provide \$600,000 to fund 12 to 15 projects to address TIP issues in Ecuador. Geneva Global held a conference on November 15 with 38 NGOs to solicit proposals for projects.

Child Labor

20. Child labor remains a major problem in Ecuador. However, the GoE, NGOs and other institutions are taking steps to combat worst forms of child labor in Ecuador. More clearly needs to be done, particularly in the enforcement of child labor laws and the rehabilitation of child laborers. In July 2004, the Ministry of Labor created a Division for Child Labor comprised of three officers, augmenting the previous single position for Child Labor, which was also responsible for international affairs. The Division meets at least monthly with the MOL and inter-agency National Committee for the Progressive Eradication of Child Labor.

21. In May 2004, the MOL hired eighteen new child labor inspectors, bringing the total nationwide to 19. Currently there are 16 inspectors due to resignations; the MOL is in the process of hiring six more. According to the ILO, the inspectors have found 500 child laborers in the field. Nation-wide the budget to prevent and combat child labor is \$465,000. Of this \$300,000 went to the Ministry of Social Welfare and still has not been spent, \$25,000 to the MOL, and \$140,000 for inspectors' salaries.

22. The Institute for the Child and Family (INNFA) has a \$3.5 million budget to work on child labor issues. (INNFA's funds do not come from the national budget; most funds come from import taxes.) Most of this money goes towards scholarships for poor children, while a smaller program is aimed towards moving children out of dangerous work. INNFA provides support for child labor inspectors and helped create an inspection manual. INNFA has worked to address the problem of child labor in the flower sector by providing information on child labor to all the major flower producers.

23. The ILO-IPEC began a child labor Time-Bound Program in October 2003 with action plans in the banana, flower, construction, trash and commercial sex exploitation of minors aiming to get children out of work and back in school. USDOL awarded \$3 million to Catholic Relief Services to target child laborers and children at risk of entering the flower and banana sectors.

24. The Child Worker Program funded by the Central Bank of Ecuador, has developed a workshop program called "Panita" which meets three times a week to promote civic values and to work with families and schools on the issue of child labor. The Child Worker Program is also planning a community ombudsman program to hire a community group to receive and act on reports of child labor. The Central Bank provided \$200,000 annually for the Child Worker Program.

25. The labor code needs to be harmonized with the Code for Children and Adolescents (passed in Congress in December 2002), which sets higher standards. The Child and Adolescents Code raised the fine for child labor violations to \$200-1000; the labor code fine remains at 50 sucres (Ecuador's obsolete currency). In the labor code, the minimum work age is 12 for work as domestics or artisans and 14 for all others, while in the Child Code it is 15 for all.

Minimum Wage

126. The minimum wage is defined in Article 94 of the labor code and is annually updated by the Ministry of Labor. (The MOL's National Technical Secretariat of Human Resources and Remuneration Development sets the minimum wage for public sector workers and the National Salary Council sets those for the private sector.) The current minimum wage as of November 2004 is \$135.62 per month and \$0.95 per hour. This is the general minimum wage and the MOL also sets minimum wages by sectors. There are reports of non-compliance with the minimum wage, particularly for foreign workers.

Occupational Safety and Health

127. The MOL reported that it received 71 work accidents complaints, 9 of which were deaths, during 2003. Workers can file complaints with the MOL's labor inspectorate or with the Social Security Institute. Occupational safety and health regulations are better enforced for those workers covered by collective bargaining agreements. The construction, flower and agro-industrial sectors reportedly suffer higher than average safety and health problems.

KENNEY